

Restorative Justice and Protection of Children's Rights in the Criminal Legal Process

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ABSTRACT

Protection for children who are in conflict with the law in the juvenile criminal justice process, from investigation, prosecution, court, to juvenile correctional facilities, has not been able to provide protection that provides a sense of justice for children. In fact, children's rights are often ignored. In the case of children, children can be perpetrators, victims, or witnesses, so serious protection and treatment is needed to prevent wider and detrimental impacts on them. Handling of children's cases must be carried out by officials who understand children's problems. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System marks progress in protecting children in conflict with the law, by changing the paradigm in handling these cases. The process of resolving children's cases is not only limited to the judiciary, but can also be carried out outside the judiciary through diversion with a restorative justice approach. This approach involves all relevant parties, including perpetrators, victims, witnesses and other parties, to jointly find solutions in the best interests of the child.

Keywords : Child Protection, Criminal Law, Restorative Justice

INTRODUCTION

The state has an obligation to maintain the legal rights of its people which are inherent in every society which is built on a fundamental legal basis¹. Children are the next generation who have a major role in determining the future of the nation. In the growth process, the child's characteristics and personality will be influenced by the conditions of the family environment and social interactions². In this process, children are sometimes involved in actions that are contrary to the laws and norms that exist in society³. Children who are involved in legal problems are the result of various conditions that occur within the scope of society, either as

¹ Zainudin Hasan, et al. "Legal Protection for Child Victims of Underage Abuse." Journal of Law and Social Politics, Volume 1, Number 2, 2023, p. 9

² Lathifah Azhar Saptaningrum, "Application of Restorative Justice to the Protection of Children in Conflict with the Law in View from the Theory of Utilitarianism." VOICE JUSTISIA: Journal of Law and Justice Vol. 6 No. 2 (2022), p. 67.

³ Liza Angesta Krisna, Child Protection Law, Guide to Understanding Children in Conflict with the Law, (Yogyakarta, Deepublish, 2018), p.1.

victims or perpetrators⁴. Children are part of society who have equal rights and must be protected and respected. In legal cases involving children, legal assistance is mandatory to ensure that their rights as children are protected.

Protection of children's rights is a human right (HAM) guaranteed by the state constitution of the Republic of Indonesia, namely 28B⁵. Children are often exposed to a system that is less sensitive to their conditions and rights. Conventional law tends to emphasize punishment and enforcement of regulations which ignores important factors such as rehabilitation, learning and recovery for children involved in criminal acts. This can result in long-term harm both to the children themselves and to society as a whole. Children have the right to obtain adequate education, health, protection from violence or exploitation and the opportunity to develop optimally⁶.

Based on this, the government and society must work together to create a safe environment that can develop with feelings of respect. In the Indonesian legal system, protection for children in conflict with the law is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. These regulations strive to provide maximum protection so that children reach their full potential. The presence of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System aims to uphold justice for children in conflict with the law through alternative restorative justice solutions. Restorative justice promises a more humane and rehabilitative approach in resolving child criminal cases. It is hoped that resolution through restorative justice can be a solution to resolve cases outside of court, so that children who are in conflict with the law will not experience the judicial process such as examination, detention and trial in court.⁷ The implementation of restorative justice is also in line with the legal objectives expressed by Gustav Randburch, namely justice, benefit and legal certainty⁸.

Restorative justice or restorative justice offers a different approach in handling criminal cases involving children. This approach focuses on restoring relationships with people involved

⁴Muhammad Taufiq Idris, et al. "The Program for Development and Fulfillment of Children's Rights at the Tanjung Raja Penitentiary Group II A is Contrary to the Law." *Journal of Sharia and Legal Science* Vol.1 No. 2 (2023), p. 59

⁵Ferdi, "Correcting the position of human rights originating from the 1948 Human Rights Doctrine by using Pancasila to measure the level of controversy or compliance", *Journal of Advocacy*, Vol. 1, No. 1, 2007, p. 83.

⁶Convention on Children's Rights in Presidential Decree No. 36 of 1997

⁷*Loc, City.*, Saptaningrum, p. 69

⁸Zainudin Hasan, "Nyukak in Lampung Customs as an Implementation of Restorative Justice, Legal Development in Various Perspectives", (Bandar Lampung: Pusaka Media, 2021), p. 54

in criminal acts by paying attention to the needs of victims, perpetrators and society, as well as providing opportunities for perpetrators to correct their mistakes.⁹. However, its implementation in criminal law practice is often faced with various challenges and obstacles. Its implementation will be optimal if there is full support from various parties, including legal institutions, society and government, to ensure its success. Apart from that, a deep understanding of the principles of restorative justice is also needed so that they can be applied effectively in criminal law practice.

METHOD

The research applied in this research uses a normative legal approach. This approach focuses on literature study, namely primary legal and secondary legal materials such as laws, regulations and legal literature that are relevant to the problem being studied. This approach is used with the aim of understanding, interpreting and evaluating existing legal norms.

DISCUSSION

Children in Conflict with the Law

A child in conflict with the law is anyone under the age of 18 who comes into contact with the justice system as a result of being suspected or accused of committing an offense¹⁰. The term child in conflict with the law is identified with "delinquent child". Delinquent children are children who commit criminal acts or children who commit acts prohibited for children according to the laws or regulations that exist and apply in the society concerned.¹¹. Anthony M. Platt (1977) defines delinquency as the actions of children which include; 1). criminal offense if committed outside by an adult, 2). Actions that violate state or community rules, 3). Immoral actions, truancy, rudeness, obscene language, associating with bad people who bring bad influence¹².

The criteria for a child to be called a delinquent child are based on Law No. 3 of 1997 concerning Children's Courts is contained in article 1 number 1 which states

⁹ Sihombing, Lasmin Alfies. "Restorative Justice, Crime, Punishment, and Criminal Justice: An Analysis of History, Opportunities and Challenges." *UNES Law Review* Vol. 6 No.3 (2024),Pg. 8909

¹⁰ Muhammad Ridwan Lubis and Panca Bachelor Men. "Criminalization of children who are in conflict with the law." *USM Law Review Journal* Vol 4.No. 1 (2021),p.228

¹¹Singgih Gunarso, *Psychology of Child and Adolescent Development*, (Mr. Gunung Mulia, Jakarta: 1999), p. 30

¹²Jack E Bynum and William E Thompson, "Juvenile Delinquency A Sociological Approach", Boston: A Peason Education Company, (Allyn and Bacon, Fifth edition, 2002), p.. 9

"A delinquent child is a person in the case of a delinquent child who has reached the age of 8 (eight) years, but has not yet reached the age of 18 (eighteen) years and has never been married."

In Indonesia, cases of children in conflict with the law are certainly very worrying considering that children are the nation's next generation. The increase in cases of children in conflict from year to year must be handled as soon as possible. Romli stated that children's problems can be seen from two things, namely intrinsic and extrinsic from child delinquency including, as follows:¹³:

1. Intrinsic Factors
 - a. Intelligence factor;
 - b. Age factor;
 - c. Gender factors;
 - d. Factors of the child's position in the family.
2. Extrinsic Factors
 - a. Household factors;
 - b. Education and school factors;
 - c. Child social factors;
 - d. Mass media factor.

These factors show that there are many things that influence the possibility of a child committing delinquency or committing an offense which results in legal and judicial processes. Handling and efforts to protect children in conflict with the law have quite extensive problems. This problem is not only related to children's actions which cause victims, but also concerns the reasons why children commit criminal acts which ultimately harm themselves.

The judicial process that children must undergo as a form of accountability for their actions has an impact on the child's development. Each stage of the judicial process, from investigation, prosecution, trial, to guidance in juvenile correctional institutions, takes quite a long time. During this process, irregularities and injustices often occur. Children's rights guaranteed and protected by law are often ignored. It is still felt that the judicial process does not protect the best interests of children, so other efforts are needed to resolve cases of children in conflict with the law.

***Restorative Justice* Regarding the Protection of Children's Rights in Conflict with the Law**

¹³Soetodjo, Wagiaty, Child Criminal Law. (Bandung, PT. Refika Aditama. 2006), p. 17

According to Samsudin (2019), children are the hope of the nation who carry the mandate and responsibility to realize the country's goals¹⁴. Based on the 1945 Constitution of the Republic of Indonesia, it is expressly stated that the state guarantees the rights of every child to survive, grow and develop, as well as the right to protection from violence, exploitation and discrimination.¹⁵ Article 3 of Law Number 11 of 2012 concerning the Juvenile Justice System outlines the rights that children obtain in criminal justice, namely:

- a. treated humanely by paying attention to needs according to age.
- b. separated from adults;
- c. obtain legal aid and other assistance effectively;
- d. engage in recreational activities;
- e. free from torture, punishment or other cruel, inhumane and degrading treatment;
- f. not sentenced to death or life imprisonment;
- g. not be arrested, detained or imprisoned, except as a last resort and for the shortest time;
- h. obtain justice before a Children's court that is objective, impartial, and in a hearing that is closed to the public;
- i. identity not published;
- j. obtain assistance from parents/guardians and people trusted by the child; k. obtain social advocacy;
- k. acquire a personal life;
- l. gaining accessibility, especially for disabled children;
- m. obtain education;
- n. obtain health services; And
- o. obtain other rights in accordance with the provisions of statutory regulations.

Protection of children's rights is an important foundation in the criminal law system, considering the vulnerability of children to various risks such as becoming victims or being involved in criminal acts. They require special protection and adequate treatment to ensure their rights are well protected. Restorative justice offers one way to achieve this goal by paying attention to the special needs of children and ensuring that their rights are well protected in the criminal law system. Child protection based on Pancasila and the 1945 Constitution as well as the principles of the convention on children's rights includes non-discrimination, the best interests of the child, the right to life, survival and development and respect for the child's opinion¹⁶.

Legal protection for children in conflict with the law is regulated in Law Number 11 of 2012 concerning the Juvenile Justice System which provides guarantees for the implementation

¹⁴Zainudin Hasan et al., "Legal Protection for Minors in Narcotics Crime Cases", *Al-Mikraj: Journal of Islamic Studies and Humanities*, Vol. 4, no. 2, 2024, Pg. 1053

¹⁵Ibid., p. 1054

¹⁶Loc. Cit., Saptaningrum, p. 71

of diversion in cases of crimes or violations involving children. The implementation of diversion can provide optimal protection for children's human rights. Harefa (2016) stated that resolving cases through formal justice channels has a negative impact on children's development because at the police investigation level, children's rights have the opportunity to be violated. Furthermore, at the level of prosecution to trial in court, the child has the possibility of being subject to criminal threats which will then place the child in a Correctional Institution (LAPAS). Placing a child in prison will give the impression that he is a criminal. This of course must be avoided because it violates children's human rights¹⁷.

The concept of transformation is in line with the spirit of restorative justice. According to Gunarto (2013), restorative justice is a model of upholding justice that is implemented by facilitating meetings between the two parties involved between the suspect and the victim and seeking to resolve the problem without harming either party.¹⁸ Restorative justice is a philosophy, process, idea, theory and intervention that emphasizes repairing losses caused or expressed by criminal perpetrators¹⁹. The concept of restorative justice theory offers answers to important issues in resolving criminal cases, namely: first, criticism of the criminal justice system which does not provide opportunities, especially for victims; second, eliminating conflict between perpetrators, victims and society; third, the fact that feelings of helplessness experienced as a result of criminal acts must be overcome in order to achieve improvement²⁰.

Article 1 paragraph (6) states that restorative justice is the resolution of criminal cases involving the perpetrator, victim or family of the perpetrator/victim as well as other parties involved to jointly agree to resolve the case fairly and focus more on restoring the situation rather than retaliation.²¹ Mushadi (2007), the concept of diversion which applies restorative justice has also been applied for a long time in Indonesia. This can be seen from the culture of Indonesian society which places a high value on solving problems in a friendly and consensus manner²².

¹⁷ Mahendra Ridwanul Ghoni & Pujiyono Pujiyono. "Legal protection for children in conflict with the law through the implementation of diversion in Indonesia." *Journal of Indonesian Legal Development* Vol. 2. No. 3 (2020),Pg. 336.

¹⁸Loc. Cit., Mahendra, p. 337

¹⁹ Strong Praise, Prayitno. "Restorative justice for the judiciary in Indonesia (philosophical juridical perspective in law enforcement In concreto)." *Journal of legal dynamics* Vol. 12. No. 3 (2012), p. 408

²⁰Ivo Aertsenm et. al., "Restorative Justice and The Active Victim: Exploring the Concept of Empowerment", *TEMIDA Journal*, 2011, p. 8-9

²¹Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

²²Loc.Cit, Mahendra, p. 338

In the provisions of article 5 of Law Number 11 of 2012 concerning the Juvenile Justice System it is expressly stated that:

1. The Juvenile Criminal Justice System must prioritize a Restorative Justice approach.
2. The Juvenile Criminal Justice System as intended in paragraph (1) includes:
 - a. criminal investigation and prosecution of children carried out in accordance with the provisions of statutory regulations, unless otherwise specified in this Law;
 - b. Juvenile trials conducted by courts within the general justice environment;
And
 - c. guidance, mentoring, supervision and/or assistance during the process of carrying out a crime or action and after undergoing a crime or action.
3. In the Juvenile Criminal Justice System as intended in paragraph (2) letters a and b, diversion must be attempted.

In article 6 of Law Number 11 of 2011 concerning the Juvenile Justice System, diversion has the aim of:

- a. achieve peace between the victim and the child;
- b. resolve children's cases outside the judicial process;
- c. prevent children from deprivation of liberty;
- d. encourage the public to participate; And
- e. instill a sense of responsibility in children.

Protection of children involved in legal conflicts requires participation from all parties, including the role of parents, family, community, government, state institutions and other stakeholders. All of these parties have obligations and responsibilities to improve the welfare of children and provide special protection to the children concerned.

Restorative justice is a diversion process in which all parties involved in a crime work together to resolve the problem and create an obligation to improve the situation. This process involves the victim, child, community and related parties to find the best solution for the child without any element of retaliation. Resolving cases of children in conflict with the law using a restorative justice approach involves all related parties working together to resolve the case and find the best solution for the child. This approach emphasizes the protection of children by prioritizing the best interests of children involved in legal conflicts.\

CONCLUSION

Protection of children in conflict with the law through a restorative justice approach has a positive impact in handling children's cases. This approach allows for clear separation and regulation of children in conflict with the law, including children involved in legal conflicts. Settlement of cases involving children in conflict with the law is usually carried out through

judicial institutions. However, with the existence of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the resolution of children's cases can be carried out outside of court through diversion. This process involves all parties, including perpetrators, victims and witnesses, to jointly resolve the conflict using a restorative justice approach. This approach prioritizes restoration of the situation rather than retaliation, and prioritizes the best interests of the child for his or her welfare.

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